

The House Committee on Ways and Means offers the following substitute to HB 140:

A BILL TO BE ENTITLED  
AN ACT

To amend Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the joint county and municipal sales and use tax, so as to revise and change procedures and requirements regarding the renegotiation of distribution certificates; to change certain provisions regarding failure to file a new certificate; to change certain provisions regarding discontinuation of the tax; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the joint county and municipal sales and use tax, is amended by revising subsection (d) of Code Section 48-8-89, relating to the distribution of proceeds and the renegotiation of distribution certificates, as follows:

~~“(d)(1) Except as otherwise provided in paragraph (7) of this subsection, a certificate providing for the distribution of the proceeds of the tax authorized by this article shall expire on December 31 of the second year following the year in which the decennial census is conducted. No later than December 30 of the second year following the year in which the census is conducted, a renegotiated certificate meeting the requirements for certificates specified by subsection (b) of this Code section shall be filed with and received by the commissioner. The General Assembly recognizes that the requirement for government services is not always in direct correlation with population. Although a renegotiated certificate is required within a time certain of the decennial census, this requirement is not meant to convey an intent by the General Assembly that population as a criterion should be more heavily weighted than other criteria. It is the express intent of the General Assembly in requiring such renegotiation that eligible political subdivisions shall analyze local service delivery responsibilities and the existing allocation of proceeds made available to such governments under the provisions of this~~

1 article and make rational the allocation of such resources to meet such service delivery  
2 responsibilities. Political subdivisions in their renegotiation of such distributions shall  
3 at a minimum consider the criteria specified in subsection (b) of this Code section.

4 (2) The commissioner shall be notified in writing of the commencement of renegotiation  
5 proceedings by the county governing authority ~~in~~ on behalf of all eligible political  
6 subdivisions within the special district. The eligible political subdivisions shall  
7 commence renegotiations at the call of the county governing authority ~~but no later than~~  
8 before July 1 of the second year following the year in which the census is conducted. If  
9 the county governing authority does not issue the call by that date, any eligible  
10 municipality may issue the call and so notify the commissioner and all eligible political  
11 subdivisions in the special district.

12 (3) Following the commencement of ~~such~~ renegotiation, if the parties necessary to an  
13 agreement fail to reach an agreement within 60 days, such parties shall ~~agree to~~ submit  
14 the dispute to nonbinding arbitration, mediation, or such other means of resolving  
15 conflicts in a manner which, ~~in the judgment of the commissioner,~~ reflects a good faith  
16 effort to resolve the dispute. Any renegotiation agreement reached pursuant to this  
17 paragraph shall be in accordance with the requirements specified in paragraph (1) of this  
18 subsection. If the parties fail to reach an agreement within 60 days of submitting the  
19 dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts,  
20 any party necessary to an agreement may file a petition in superior court of the county  
21 seeking resolution of the items remaining in dispute. Such petition shall be assigned to  
22 a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in  
23 which the county is located. The judge selected may also be a senior judge pursuant to  
24 Code Section 15-1-9.2 who resides in another circuit. The county and qualified  
25 municipalities representing at least one-half of the aggregate municipal population of all  
26 qualified municipalities located wholly or partially within the special district shall  
27 separately submit to the judge and the other parties a written best and final offer as to the  
28 distribution of the tax proceeds. There shall be one such offer from the county and one  
29 from qualified municipalities representing at least one-half of the aggregate municipal  
30 population of all qualified municipalities located wholly or partially within the special  
31 district. The offer from the county may be an offer representing the county and any  
32 municipalities that are not represented in the offer from the qualified municipalities  
33 representing at least one-half of the aggregate municipal population of all qualified  
34 municipalities located wholly or partially within the special district. Each offer shall take  
35 into account the allocation required for any absent municipalities in accordance with  
36 subsection (b) of this Code section. The visiting or senior judge shall conduct such  
37 hearings as the judge deems necessary and shall render a decision based on, but not

1 limited to, the criteria in subsection (b) of this Code section and in paragraph (1) of this  
2 subsection. The judge's decision as to the allocation of the tax proceeds shall adopt the  
3 best and final offer of one of the parties but shall also include findings of fact. The judge  
4 shall enter a final order containing a new distribution certificate and transmit a copy of  
5 it to the commissioner. Appeal shall be by application and the decision of the judge shall  
6 be disturbed only for the judge's disregard of the law, for partiality of the judge, or for  
7 corruption, fraud, or misconduct by the judge or a party.

8 (4) If the renegotiated certificate provided for in paragraph (1) of this subsection is not  
9 received by the commissioner by the required date, ~~the authority to impose the tax~~  
10 ~~authorized by Code Section 48-8-82 shall cease on December 31 of the second year~~  
11 ~~following the year in which the decennial census is conducted and the tax shall not be~~  
12 ~~levied in the special district after such date unless the reimposition of the tax is~~  
13 ~~subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the~~  
14 ~~tax is so terminated, the commissioner shall retain the proceeds of the tax which were to~~  
15 ~~be distributed to the governing authorities of the county and qualified municipalities~~  
16 ~~within the special district until the commissioner receives a certificate in behalf of each~~  
17 ~~such governing authority specifying the percentage of the proceeds which each such~~  
18 ~~governing authority shall receive. If no such certificate is received by the commissioner~~  
19 ~~within 120 days of the date on which the authority to levy the tax was terminated, the~~  
20 ~~proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the~~  
21 ~~state's general fund~~ the commissioner shall continue to distribute the sales tax proceeds  
22 according to the percentages specified in the existing certificate or in accordance with  
23 subsection (f) of Code Section 48-8-89.1, as applicable, until a new certificate is properly  
24 filed.

25 (5) If the commissioner receives ~~the~~ a renegotiated certificate by the required date, the  
26 commissioner shall distribute the proceeds of the tax in accordance with the directions  
27 of the renegotiated certificate commencing on January 1 of the year immediately  
28 following the year in which such certificate was renegotiated or the first day of the  
29 second calendar month following the month such certificate was renegotiated, whichever  
30 is sooner.

31 (6) Costs of any conflict resolution under paragraph (3) of this subsection shall be borne  
32 proportionately by the affected political subdivisions in accordance with the final  
33 percentage distributions of the proceeds of the tax as reflected by the renegotiated  
34 certificate or as otherwise ordered by the court.

35 (7) ~~All distribution certificates on file with the commissioner on July 1, 1994, which~~  
36 ~~were not renegotiated in accordance with the 1990 decennial census figures or~~  
37 ~~renegotiated on or after January 1, 1992, shall expire on December 31, 1995.~~

Renegotiations with respect to such certificates shall be commenced in accordance with the requirements of this subsection on or before July 1, 1994. If a renegotiated certificate is not received by the commissioner by July 1, 1995, the authority to impose the tax authorized by Code Section 48-8-82 shall cease on December 31, 1995, and the tax shall not be levied in the special district after that date unless reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. The commissioner shall retain and distribute the proceeds of such terminated tax in accordance with paragraph (4) of this subsection.

(8) No qualified municipality within the special district whose population is less than 5 percent of the population in the special district according to the United States decennial census of 1990 shall receive a reduced percentage of distribution than presently being received under the existing certificate prior to renegotiations required in paragraph (7) of this subsection unless the new agreement is executed by the qualified municipality. This paragraph shall apply only to the negotiations required by paragraph (7) of this subsection and shall not apply to any subsequent renegotiations required by this subsection.

~~(9)~~(7) Political subdivisions shall be authorized, at their option, to renegotiate distribution certificates on a more frequent basis than is otherwise required under this subsection.

(8) Notwithstanding any other provision of this article to the contrary, the imposition of this tax shall not terminate based on a failure to file a new or renegotiated certificate.

~~(10)~~(9) No provision of this subsection shall apply to any county which is authorized to levy or which levies a local sales tax, local use tax, or local sales and use tax for educational purposes pursuant to a local constitutional amendment or to any county which is authorized to expend all or any portion of the proceeds of any sales tax, use tax, or sales and use tax for educational purposes pursuant to a local constitutional amendment."

## SECTION 2.

Said article is further amended by revising subsection (d) of Code Section 48-8-89.1, relating to lapsing of the tax due to failure to file a new certificate, as follows:

"(d) ~~If a new certificate is not filed for any special district as required by this Code section, the authority to impose the tax authorized by Code Section 48-8-82 within that special district shall cease on the first day of January of the year following the year in which the required distribution certificate could last have been timely filed. In any special district in which the authority to impose the tax is terminated pursuant to this subsection, the tax may thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84 through 48-8-86~~ Reserved."

### SECTION 3.

Said article is further amended by revising Code Section 48-8-92, relating to the referendum election on discontinuing imposition of the tax, as follows:

"48-8-92.

(a) Whenever the governing authority of any county ~~or~~ and the governing authorities of qualified ~~municipality~~ municipalities containing more than one-half of the aggregate population of all qualified municipalities located wholly or partially within a special district in which the tax authorized by this article is being levied ~~wishes~~ wish to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be discontinued, ~~the~~ such governing ~~authority~~ authorities shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a joint resolution of the governing ~~authority~~ authorities calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the tax to the voters of the special district for approval or rejection. The election superintendent shall ~~set the date of the election for a day not less than 30 nor more than 45 days after the date of the issuance of the call~~ issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

'( ) YES Shall the 1 percent retail sales and use tax being levied within the special  
( ) NO district within \_\_\_\_\_ County be terminated?'

(b) All persons desiring to vote in favor of discontinuing the tax shall vote 'Yes,' and those persons opposed to discontinuing the tax shall vote 'No.' If more than one-half of the votes cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first day of the second calendar quarter following the month in which the commissioner receives the certification of the result of the election; otherwise, the tax shall continue to be levied, and the question of the discontinuing of the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be ~~his~~ such superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election."

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